

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on June 23, 2010 has been entered.
2. Claims 1-3, 6, 8, 11-17, 20-22, 24-26, 31, 39-43, 55, 56, 59, 60, 68, and 69 are currently pending and claims 44-52 have been withdrawn from consideration.

Drawings

3. The drawings were received on July 26, 2004. These drawings are acceptable.

Claim Objections

4. Claim 56 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 55 recites the tissue receptacle is cup-shaped in line 5.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-3, 6, 8, 11-17, 20-22, 24-26, 31, 39-43, 68, and 69 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements, such omission amounting to a gap between the elements. See MPEP § 2172.01. The omitted elements are: the non-liquid jet tissue-excision component comprising a cup- or scoop- shaped tissue receptacle (i.e. curette). The claim recites the non-liquid jet tissue excision component is "located substantially opposite the jet-receiving opening and extending radially outward from a location defined by an axial center of the nozzle to a radial periphery having a sharpened edge extending circumferentially about the non-liquid jet tissue-excision component and in a direction substantially perpendicular to the axial center of the nozzle". It is unclear what structure Applicant is claiming for the non-liquid jet tissue excision component if the structural limitation of the cup- or scoop- shaped tissue receptacle is not recited to give a reference for the non-liquid jet tissue excision component extending "radially outward" to a "radial periphery" and for the structure of the excision component that enables the sharpened edge to extend "circumferentially about" the excision component.

8. Claim 6 recites the instrument further comprises a "cup-shaped tissue receptacle configured and positioned to contain tissue excised by the tissue excision component". Claim 1 recites the excision component is located substantially opposite the jet-receiving opening and extending radially outward from the axial center of the nozzle to a radial periphery, wherein a sharpened edge extends circumferentially about the excision component. Thus, it appears Applicant intends the excision component to comprise the cup-shaped tissue receptacle, wherein the cup-shaped tissue receptacle is configured and positioned to contain tissue excised by the sharpened edge rather than the tissue excision component.

9. Claim 8 recites the limitation "the rim of the receptacle" in lines 1-2. There is insufficient antecedent basis for this limitation in the claim.

10. Claim 8 recites the limitation "non-fluid jet tissue-excision component" in line 2. There is insufficient antecedent basis for this limitation in the claim. Support exists for a non-*liquid* jet tissue-excision component.

11. Claim 68 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements, such omission amounting to a gap between the elements. See MPEP § 2172.01. The omitted elements are: the non-liquid jet tissue-excision component comprising a cup- or scoop- shaped tissue receptacle (i.e. curette). The claim recites the non-liquid jet tissue excision component is "located substantially opposite the jet-receiving opening and extending outward from a location defined by an axial center of the nozzle to a periphery having a sharpened edge extending circumferentially about the non-liquid jet tissue-excision component and in a direction substantially perpendicular to the axial center of the nozzle". It is unclear what structure Applicant is claiming for the non-liquid jet tissue excision component if the structural limitation of the cup- or scoop- shaped tissue receptacle is not recited to give a reference for the non-liquid jet tissue excision component extending outwardly to a periphery and for the structure of the excision component that enables the sharpened edge to extend "circumferentially about" the excision component.

12. Claim 68 recites the limitation "the jet-receiving opening" in line 10. There is insufficient antecedent basis for this limitation in the claim.

13. Claim 69 recites the curette device further comprises "an evacuation lumen comprising a jet-receiving opening". The jet-receiving opening was previously recited in line 10 of claim 68 and thus it is unclear if the curette device has two jet-receiving openings or if each claim is referring to the same element.

Allowable Subject Matter

14. Claims 55, 56, 59, and 60 are allowed.
15. The following is an examiner's statement of reasons for allowance: The prior art does not teach a surgical instrument comprising a cup-shaped tissue receptacle having a sharpened peripheral rim extending circumferentially about the non-liquid jet tissue-excision component (i.e. a curette-type device) in combination with a liquid jet cutter, as claimed. The prior art does disclose a liquid jet cutter in combination with a receptacle that may be interpreted as cup-shaped, wherein the nozzle is located at the distal end of the instrument and directs the liquid jet towards the proximal end of the instrument (Fig 3 of Drasler et al. – US 5,496,267). Furthermore, the prior art teaches attaching a non-liquid jet cutting element (i.e. sharpened edge and tip 40, 42) to the outer edge of a liquid jet instrument (col 3, II 26-29 of Patterson et al. – US 5,944,686). Alternatively, the prior art teaches a cutting edge (50) may be positioned adjacent the liquid jet nozzle opening (Plechinger et al. – US 5,318,518). However, the prior art does not teach a cup-shaped tissue receptacle that has a circumferentially-shaped peripheral rim with a sharpened edge extending circumferentially along the rim to form the non-liquid jet tissue excision component.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to KATHERINE M. DOWE whose telephone number is (571)272-3201. The examiner can normally be reached on M-F 8:30am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Jackson can be reached on (571) 272-4697. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Katherine Dowe
May 22, 2011

/Katherine M Dowe/
Examiner, Art Unit 3734



EXAMINER'S CASE ACTION WORKSHEET

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DATE OF COUNT

<input checked="" type="checkbox"/> Non-Final Rejection	<input type="checkbox"/> Restriction/Election Only	<input type="checkbox"/> Final Rejection
<input type="checkbox"/> Ex Parte Quayle	<input type="checkbox"/> Allowance	<input type="checkbox"/> Advisory Action
<input type="checkbox"/> Examiner's Answer	<input type="checkbox"/> Reply Brief Noted	<input type="checkbox"/> Non-Entry of Reply Brief
<input type="checkbox"/> Defective Notice of Appeal	<input type="checkbox"/> Interference Disposal SPE _____ (Approval for Disposal)	<input type="checkbox"/> Suspension (Examiner-Initiated) SPE _____ (Initial)
<input type="checkbox"/> Defective Appeal Brief	<input type="checkbox"/> SIR Disposal (use only after FAOM)	<input type="checkbox"/> Supplemental Examiner's Amendment
<input type="checkbox"/> Miscellaneous Office Letter (With Shortened Statutory Period Set)	<input type="checkbox"/> Notice of Non-Responsive Amendment (With One Month Time Period set)	<input type="checkbox"/> Miscellaneous Office Letter (No Response Period Set)
<input type="checkbox"/> Abandonment after BPAI Decision	<input type="checkbox"/> Supplemental Action	<input type="checkbox"/> Response to Rule 312 Amendment
<input type="checkbox"/> Letter Restarting Period for Response (e.g., Missing References)	<input type="checkbox"/> Interview Summary	<input type="checkbox"/> Authorization to Change Previous Office Action SPE: _____ (Initial)
<input type="checkbox"/> Abandonment	<input type="checkbox"/> Express Abandonment Date: _____	<input type="checkbox"/> Other

Examiner's Name: KATHERINE DOWE

AU: 3734